

Law Offices of
Gabriel D. Fernández, P.C.
P.O. Box 50824
Tucson, AZ. 85705
520-293-6255

Gabriel D. Fernández
gfernandez@gdflaw.com
State Bar #016483 PCC#65021

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DIANNA SHEA-DIAZ,	Case No.
Plaintiff,	
vs.	COMPLAINT
UNITED STATES OF AMERICA,	(Federal Tort Claim pursuant to
Defendants.	FTCA)

Plaintiff, DIANNA SHEA-DIAZ, for her Complaint against Defendant, United States of America, a governmental entity, for her cause of action alleges:

I. JURISDICTION AND VENUE

1. Jurisdiction is founded on a federal question arising under the Federal Tort Claim Act (FTCA), 28 U.S.C. §2671, *et seq.* and 28 U.S.C. §1346(b).

2. On July 13, 2021, Plaintiff filed timely and served proper written notice of her tort claim against the United States Post Office in compliance with 28 U.S.C. § 2401, 2675.

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3. Plaintiff files this action more than six months after filing a proper claim pursuant to 28 U.S.C. § 2675(a). Although the statutory time has passed, Plaintiff has not received an admission, denial, or any other substantive response to her claim.

4. Plaintiff has complied with or exhausted all administrative remedies, and her federal tort claim is ripe for adjudication.

5. Therefore, pursuant to 28 U.S.C. § 2675(a), Plaintiff deems her claim constructively denied and brings this lawsuit in a timely manner.

6. This Court is the appropriate venue as it is the federal district where Plaintiff resided and in which the acts complained of occurred. 28 U.S.C. §1402(b).

II. PARTIES

7. Plaintiff DIANNA SHEA-DIAZ is a resident of Pima County Arizona.

8. Upon information and belief, James Burns, at the time of the event set forth herein, was an employee, servant and/or agent of the United States Post Office, which is an agency/entity of Defendant United States of America ("USA").

9. Upon information and belief, James Burns, at the time of the event set forth herein was a resident of Pima County, Arizona and was acting within the course and scope of his employment or under the direction and control of the United States Post Office/USA, or under such other circumstances as to justify imputing vicarious liability to the USA for the careless, negligent and reckless acts complained of herein.

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2 10. Defendant USA is a sovereign nation and legal governmental entity
3 that is directly responsible for the conduct of the United States Post Office and
4 James Burns.

5 11. Alternatively, Defendant USA is a sovereign nation and legal
6 governmental entity that employed, funded, and is vicariously liable for the
7 conduct of the United States Post Office and James Burns.
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9 12. Burns is not a necessary party to this FTCA claim.
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11 **III. FACTUAL ALLEGATIONS**

12 13. On March 25, 2020 Plaintiff DIANNA SHEA-DIAZ sustained
13 personal injuries in a motor vehicle vs. bicycle collision occurring on Columbus
14 Boulevard at or near Pima Street in Tucson, Arizona.
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16 14. The collision was caused by the negligent and/or careless manner in
17 which James Burns, an employee of the United States Post Office/USA, acting
18 within the course and scope of his employment, operated a motor vehicle owned by
19 the United States Post Office/USA.
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21 15. James Burns, driving a United States Post Office/USA van,
22 negligently failed to yield the right of way to Plaintiff DIANNA SHEA-DIAZ,
23 striking the bicycle that she was riding on/operating.
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25 16. As a direct and proximate result of the conduct of James Burns,
26 Plaintiff DIANNA SHEA-DIAZ sustained severe, permanent and disabling injuries
27 that have resulted in considerable pain, suffering, inconvenience, loss of earnings,
28 and loss of enjoyment of life, and will cause future pain and suffering.

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P.O. Box 50824
Tucson, AZ 85703
(520) 293-6255

17. As a further direct and proximate result of the negligence of Defendants, Plaintiff has incurred medical and related expenses for care and treatment and may incur such expenses in the future.

18. As a further direct and proximate result of the negligence of Defendants, Plaintiff has sustained damage to her property, including but not limited to her bicycle repairs and loss of use.

19. Plaintiff is entitled to compensatory damages from Defendant USA because of the negligent conduct of its agent/employee, James Burns.

20. Plaintiff requests a jury trial on all issues.

WHEREFORE, Plaintiff requests judgment against the Defendants as follows:

- (1) For general damages in a fair and reasonable amount;
- (2) For the reasonable value of Plaintiff's medical and related expenses incurred to date and to be incurred in the future;
- (3) For the bicycle repairs, and ongoing loss of use of her bicycle.
- (4) For Plaintiff's costs and expenses incurred to date, and to be incurred in the future in this action; and
- (5) For such other and further relief as the Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 23rd day of May, 2022.

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By: /s/ Gabriel D. Fernández
Gabriel D. Fernández
Attorney for Plaintiff